

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Charles Burge,

Case No. 5:19-cv-1266

Petitioner,

v.

ORDER

Jay Forshey, Warden¹,

Respondent.

Before me is the September 30, 2020 Report and Recommendation of Magistrate Judge William H. Baughman, Jr., (Doc. No. 10), recommending I grant the motion of Respondent Jay Forshey to dismiss the petition of *pro se* Petitioner Charles Burge for a writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 7). Judge Baughman recommends I conclude Burge filed his petition outside of the statute of limitations and fails to present a credible claim of actual innocence sufficient to toll the limitations period.

Under the relevant statute, “[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.” 28 U.S.C. § 636(b)(1); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981). Burge filed three separate motions for extensions of time to file his objections, each of which I granted. (*See* Doc. Nos. 11, 12, and 13). The deadline I set after granting Burge’s third

¹ The petitioner currently is incarcerated at the Noble Correctional Institution in Caldwell, Ohio, where Jay Forshey is the Warden. The Clerk of Court is ordered to substitute Forshey as the Respondent in this case. Fed. R. Civ. P. 25(d).

motion – May 1, 2021 – has passed and Burge has not filed his objections or requested additional time in which to do so.

The failure to file written objections to the Magistrate Judge’s Report and Recommendation constitutes a waiver of a determination by the district court of an issue covered in the report.

Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984), *aff’d*, 474 U.S. 140 (1985); *see also Walters*, 638 F.2d at 950 (6th Cir. 1981); *Smith v. Detroit Fed’n of Teachers, Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987) (“[O]nly those specific objections to the magistrate’s report made to the district court will be preserved for appellate review”).

Following my review of the Magistrate Judge’s Report and Recommendation, I accept Judge Baughman’s recommendation and conclude Burge fails to present a credible claim of actual innocence. Therefore, I conclude Burge’s petition is barred by the one-year limitations period set forth in 28 U.S.C. § 2244(d) and grant Respondent’s motion to dismiss. (Doc. No. 7). Further, I certify there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

So Ordered.

s/ Jeffrey J. Helmick
United States District Judge